

April 28, 2008

1

TOWN OF NEW WINDSOR
ZONING BOARD OF APPEALS
APRIL 28, 2008

MEMBERS PRESENT: KATHLEEN LOCEY, ACTING CHAIRMAN
FRANCIS BEDETTI, JR.
JAMES DITTBRENNER

ALSO PRESENT: MICHAEL BABCOCK
BUILDING INSPECTOR

ANDREW KRIEGER, ESQ.
ZONING BOARD ATTORNEY

MYRA MASON
ZONING BOARD SECRETARY

ABSENT: PAT TORPEY
MICHAEL KANE, CHAIRMAN

REGULAR_MEETING

MS. LOCEY: I'd like to call to order the April 28,
2008 meeting of the New Windsor Zoning Board.

APPROVAL_OF_MINUTES_DATED_FEBRUARY_25,_2008_AND_MARCH_
10,_2008

MS. LOCEY: Motion to accept minutes of the February 25
as well as the March 10, 2008 meetings of the Zoning
Board of Appeals.

MR. DITTBRENNER: So moved.

April 28, 2008

2

MR. BEDETTI: I'll second that but I think there's a correction on one.

MS. LOCEY: So we have a motion and a second on the floor and now we can open it up for discussion.

MR. BEDETTI: On the March 10 minutes on the very top of page number 8 I believe it was page 8 on the March 10, the response that was given is under my name, I had asked the question and then the response was like I was answering my own question and that should have been assigned to the applicant. In fact, the applicant is here tonight so but that should be corrected.

MS. LOCEY: Perhaps we can accept both sets of minutes with that one amendment. Roll call.

ROLL CALL

MR. DITTBRENNER	AYE
MR. BEDETTI	AYE
MS. LOCEY	AYE

PRELIMINARY_MEETING:

AVAN_REALTY,_LLC

MS. LOCEY: Here at the Zoning Board of Appeals each applicant goes through a two phase process, the first phase is a preliminary hearing when the applicant comes in front of the board and explains what it is he or she is looking for and we do it that way so that we can tell you exactly what's needed for your application to be successful. And once we go through that preliminary portion, a public hearing will be scheduled where you formally will make your presentation and the public will be invited to make any comments and the decision rendered at that time.

Mr. Haig Sarkissian appeared before the board for this proposal.

MS. LOCEY: Request for one additional freestanding sign at 140 Executive Drive.

MR. SARKISSIAN: My name is Haig Sarkissian with Avan Realty and we're constructing a 10,000 square foot medical office building at the end of Executive Drive and presently Executive Drive is a dead-end street. There are two buildings on that, each building has a sign at the corner of Executive Drive and Temple Hill Road. We would like to ask for a variance to put a sign at the corner of Temple Hill Road and Executive Drive as well so that our patients who will be coming to the practice will be able to see where we're located.

MS. LOCEY: Will the request for the sign with that construction of the sign will you be taking out any substantial vegetation any large number of trees or that sort of thing? A lot of these questions will seem somewhat silly but we have to get them on record.

MR. SARKISSIAN: Presently there's flat open land at the west corner of Executive Drive where the two signs are, there are no trees or vegetation that will need to be taken out.

MS. LOCEY: The location where you propose this sign will it at all impede the vision of traffic coming and going from each direction?

MR. SARKISSIAN: No, it will not, there are two signs there already, the sign will go to the south of the two signs further away from the street, therefore, it will not impede any view of any traffic.

MS. LOCEY: Are there any right-of-ways or easements in the area where the sign is to be erected?

MR. SARKISSIAN: The small corner lot is owned by Mr. Bill Helmer, we have gotten his approval to put the sign on that lot. We're not aware of any right-of-ways or easements at that corner.

MS. LOCEY: I do see that you have provided the board with one picture, do you think that that's sufficient for our needs?

MR. KRIEGER: The reason for the pictures is to allow the board to see the site and to look at it. Now, I note the one picture they have provided it doesn't indicate where the proposed sign is going so I don't, does it show on the picture?

MR. BEDETTI: It has an X on it, at least this one does.

MR. KRIEGER: Then I think that question I personally would be inclined to believe that it makes an inadequate record but if the members of the board would like additional pictures I think that's appropriate. I would like to see the record contain more pictures.

MS. LOCEY: If you could give us some more.

MR. SARKISSIAN: We'll be happy to provide additional pictures.

MS. LOCEY: A view from both sides so we can see how it will affect oncoming traffic from both corrections.

MR. SARKISSIAN: Yes, we can do that.

MS. LOCEY: What would the impacts be if you're not allowed to have the sign, in other words, you're asking for a variance for one additional sign, how would that affect your business if that were not allowed?

MR. SARKISSIAN: I believe that not having the sign will cause our patients coming into the office miss that turn and go further down and have to make u-turns and create additional traffic that would be unnecessary and I think having the sign will ease everybody's ability to reach us without having to create additional u-turns, the need to have u-turns or any additional traffic in the area.

MR. BABCOCK: Miss Chairman, the building that he's referring to is being built behind the glass building, the big glass building.

MS. LOCEY: At the end of Executive Drive?

MR. BABCOCK: Not quite at the end but towards the end.

MR. SARKISSIAN: This would be at the end.

MR. BABCOCK: Executive Drive keeps on going but basically it's the end of the straight before Executive Drive will take a left and start down the hill, so his building really isn't on the main drag and that's why he wants to put the sign out there. Coming from the

west you may be able to get a glance of his building going by but going east you'd never know it's there unless you had a sign.

MS. LOCEY: Any other members of the board have any questions?

MR. BEDETTI: Yeah, I have a question. How many opportunities are there going to be for other additional buildings on that road? I think there's some vacant land there and the question I would have in my mind is how many of those signs are we actually going to put on that corner? It might be wise for them to consider getting together and making a single sign compartment as opposed to putting up the 4 or 5, 6, 7 signs, you know, if there's that much vacant land I'd be concerned about how many of those signs we could safely put there without them becoming a hazard for both visibility point of view and cars going in and out making that turn. I don't know how you can handle that putting them together or some consideration, I think we, somebody should be considering that how many more signs we're going to allow, looks like there's two now he's going to put up one, if there's going to be four or five for other buildings there.

MS. LOCEY: Is there room for additional expansion back there that would require additional signage?

MR. BABCOCK: There's room for expansion, I don't know that the next project whether they'd want a sign or not, they probably would I think at some point, I mean, if that's the concern of the board, I don't know what the right number is, is 3 the right number, is 4 the right number, is 5 the right number. That's why they're here.

MR. SARKISSIAN: There's also plans in the future to extend Executive Drive and connect to down to 207 at the traffic light when we get our approval there was

extension discussion about doing that. Presently Executive Drive will turn and end in a cul-de-sac so it still would be a dead-end and I would think that at a point where Executive is actually connected back to 207 300 then the need for signs will be taken away since it will be a connecting thoroughfare. And I think that that's not a way to handle that. The combination would be one way and the other is by connecting Executive we can eliminate the need for a sign at the corner.

MR. BEDETTI: Or you may come back for a sign down on the other corner where the new intersection would be.

MR. BABCOCK: This gentleman has nothing to do, he's only got to do with the one sign that he's dealing with tonight.

MS. LOCEY: Right and this board needs to make a decision on his request and I don't know if there's any procedure or recommendation this board could make as far as perhaps the town planning for future signage in that area, I don't know but it certainly should not impact his application this evening.

MR. SARKISSIAN: Another discussion I had with the building department with Michael Babcock is that it's not legal to put a large sign, if you make that sign a combined sign larger than the required another variance is needed to combine it so the recommendation was it's simpler and customary to ask for a standard size sign and make it stand alone.

MR. KRIEGER: Correct me if I'm wrong the sign you're proposing to put up is not on the property owned by the applicant, it's on somebody else's property?

MR. SARKISSIAN: Correct, so are the other two signs.

MR. KRIEGER: Yes, I understand. For location of a sign on somebody else's property I would like to have,

I'd like to see the record contain not only some easement, you know, I need something in writing. It's real property and also I think it should be for a public hearing by the time of the public hearing they should have a proxy from the owner.

MR. BABCOCK: The property owner is here.

MS. MASON: I have one.

MR. KRIEGER: Then that's taken care of then, I just need to see an easement in recordable form so we know that they have the legal right to do that because it's required for real property.

MS. MASON: No, I don't.

MS. LOCEY: Correction, Myra does not have the proxy so we'll need to see that also.

MR. DITTBRENNER: Does the proposed sign conform to the existing two that are on the property?

MR. SARKISSIAN: Correct size and form.

MR. DITTBRENNER: Is there any lighting proposed for the sign?

MR. SARKISSIAN: Yeah, both will have similar lighting.

MS. LOCEY: Any flashing?

MR. SARKISSIAN: No, steady, fixed.

MS. LOCEY: If there are no other questions, I would ask for a motion to schedule a public hearing.

MR. BEDETTI: I will make a motion that we schedule a public hearing for the Avan Realty request for additional freestanding sign at 140 Executive Drive.

April 28, 2008

9

MR. DITTBRENNER: I'll second it.

ROLL CALL

MR. DITTBRENNER	AYE
MR. BEDETTI	AYE
MS. LOCEY	AYE

POOOR_PEDDLER,_INC._ (08-14)

MS. LOCEY: Several requested variances, 29,110 square foot minimum lot area gross, 47 foot 5 inches front yard setback from Route 32, 24 foot maximum building height, 30 foot rear yard setback, 22 foot front yard setback on Ruscitti Road and four off-site parking spaces.

MR. COPPOLA: Thank you. My name is Anthony Coppola, I'm the architect who prepared the plans. Basically, what we're proposing is a two story addition to Screen Gems which is an existing printing business, screen printing business for the corner of Windsor Highway and Ruscitti Drive. Basically, just to quickly describe the existing property and what we're proposing to do, the existing building is approximately 1,800 square feet on the upper story, the story that faces Windsor Highway, there's a full basement in the rear and basically right now that's the entire Screen Gems business is occupied in that 1,800 square feet. The site itself is basically I think almost a hundred percent paved as it exists right now. There are curbing that DOT I think put in at some point down the road but basically the existing site as depicted on the survey and the site plan is well within that the existing curbing so it's very deceiving if you were to go out and the site is almost 25 feet, the lot line is almost 25 feet inside the curbing. So what we have done and we were, we presented this to the planning board way back in December is basically laid out as much parking as we could, we're laying out 16 parking spaces, handicapped parking space, a little bit of landscaping and essentially what we're proposing is a two story addition that's over the existing footprint. There's a concrete patio and foundation just to the south of the existing building so 20 x 30. So basically we're increasing it by a little over 1,200 square feet. So most of the existing variances that we're asking for some are basically all pre-existing,

again because the lot line is way inside the curbing line, the front yard setbacks on we have two front yard setbacks, they were required to be 60, we're nowhere near that, it's 11 foot 7 inches on the existing property corner and 38 feet on the proposed property corner off Ruscitti. The rear yard setback is actually the encroachment this property is on by I think just under two feet, the Consolidated Rail property to the rear so then in combination with that the setback is figured as a function of the setback to the property line so we have no setback there so the height of the building is also now an issue but again that's more or less pre-existing. We're basically matching what we have there. So those are basically the five or six variances that we're asking for, the existing lot size is undersized, it's required to be 40,000 square feet, it's just over 10,000 square feet, the two front yard setbacks I mentioned, the parking spaces we're not that far off, we're required to have 20, we're providing 16 and that's again all that parking is on our lot well within the DOT curbing, the maximum building height I mentioned and the rear yard setback, again, we're actually an encroachment and that's required to be 30 feet but that's existing. So just quickly what we're proposing in the inside is again the existing Screen Gems business we're classifying as mercantile, that first floor is going to be basically an expansion of that screen printing business and the second floor which is 600 square feet is just going to be offices. And I think we were also going to do a bit of a facade renovation to try and make this building look less like an ice cream stand and a little more like an operating business so that's kind of two renderings of what we might do there and that's still something that we're looking at. That's basically it.

MR. BABCOCK: Anthony, the only variance that's being created by the new addition is the front yard setback at Ruscitti Road?

MR. COPPOLA: That's correct.

MR. BABCOCK: So the rest of them are all existing conditions on the lot other than the parking?

MR. COPPOLA: The parking, yeah.

MS. LOCEY: I'm just a bit confused because the addition is two stories, the original block building is one story and yet you said it's the same height.

MR. COPPOLA: It's not the same height, it's in line, the rear is in line but I'm not sure how the variance works, I think we did it off the newer height but the maximum allowable height of the building is a function of the setback. You see what I'm saying?

MS. LOCEY: Yes, I do.

MR. COPPOLA: So we calculated it that way but we're higher, I mean no doubt we're higher, we're a full story higher than what's there now so that's correct.

MS. LOCEY: Is that's being created?

MR. BABCOCK: That's correct, I'm sorry, yes.

MS. LOCEY: Okay, so they're allowed zero height because they have zero--

MR. BABCOCK: That's correct, zero rear yard.

MR. COPPOLA: One inch per foot.

MR. BABCOCK: That's correct.

MR. COPPOLA: And it's zero and we're proposing 24 feet for the two stories.

MS. LOCEY: And the existing dwelling or the existing

block building already encroaches on the consolidated railroad?

MR. COPPOLA: Right in the back here.

MS. LOCEY: Legally should we be calling for anything from Consolidated Rail?

MR. KRIEGER: No, if it already exists there's nothing you can do about it. The way I read the map anyway the proposed addition will add to that encroachment.

MR. COPPOLA: No, no.

MR. KRIEGER: Yeah, so it's not like this board is giving them permission to encroach, it's not in front of the board so it has no affect on that either way.

MS. LOCEY: Okay, your proposed addition during construction will you be taking away any substantial vegetation?

MR. COPPOLA: No, we won't.

MS. LOCEY: And any water drainage problems as a result of the construction?

MR. COPPOLA: That will remain exactly as it is now.

MS. LOCEY: What about lighting?

MR. COPPOLA: We'll show the planning board adequate site lighting and not spill that onto adjacent properties.

MS. LOCEY: And you have already spoken of one encroachment on, well, it's not an easement, it's just on someone else's property but are there any existing easements or right-of-ways that you're aware of?

MR. COPPOLA: No.

MS. LOCEY: And obviously the size of the property and the high shape of the property there really is no way you can do such an addition without the requested variances?

MR. COPPOLA: That's correct.

MS. LOCEY: Does anybody else have any questions, comments?

MR. BEDETTI: I'm a little bit confused here, you have two front yard setbacks, one to Route 32, is that addition facing Ruscitti Road or--

MR. COPPOLA: Well, there's going to be--

MR. BEDETTI: It identifies two front yards.

MR. BABCOCK: Because it's two roads, two different roads require you to have two different setbacks, it's a corner lot.

MR. KRIEGER: It's a legal requirement, visually, if you look at the building it appears to only have one front like every other building but because it's on a corner of two roadways it legally speaking needs to have two front yards.

MS. LOCEY: Your request for a variance of four parking spaces there's nowhere on that property you could squeeze those?

MR. COPPOLA: No, again, we have 25 feet between the curb line and our property line so we fit as many as we could, even two over here, so I think that's really the maximum we could do. He does really run the type of business that he doesn't run a huge amount of business that gets a huge amount of traffic, there's only a few

cars there at one time.

MS. LOCEY: This business has been there for several years.

MR. COPPOLA: Yes, don't know exactly how many years but I know it's been quite a while.

MS. LOCEY: And we do have pictures, I don't see any that shows the traffic coming and going, perhaps one or two of those could be added to what you have already given us.

MR. COPPOLA: Of the state highway.

MS. LOCEY: Just so we can see how the addition will impact traffic.

MR. COPPOLA: Sure.

MR. BEDETTI: The office buildings, now is the office that you're proposing support the store or is it open for rentals?

MR. COPPOLA: Well, I think he wants the option of doing both, I think he does need an office, it's going to start out that way but he does have a side entrance but there's an option if anything changes that he'd be able to rent it out separately so he's telling me both.

MS. LOCEY: Is it zoned for two uses?

MR. BABCOCK: Yes, the requirements are the same.

MR. COPPOLA: I think the parking, well, yes, parking is the same.

MS. LOCEY: Any further questions? If not, I ask for a motion.

April 28, 2008

16

MR. BEDETTI: I'll make a motion that we schedule a public hearing for Pooor Peddler, Inc. for the request for variances as stated.

MR. DITTBRENNER: I'll second the motion.

ROLL CALL

MR. DITTBRENNER	AYE
MR. BEDETTI	AYE
MS. LOCEY	AYE

LOIS_LYON_(08-15)

MS. LOCEY: Request for two foot side yard setback for proposed 28 foot by 10 foot addition at 2 Chimney Corner Road in an R-4 zone.

MR. THOMPSON: My name is Joseph Thompson, project manager at Minuta Architecture here tonight on behalf of our client, Lois Lyon. Essentially, the reason we're here is our additional building application is denied, we need a two foot side yard setback. The addition will be interior and exterior renovations and warrant that setback, we're proposing a new front covered porch across the entire front facade and patio walkway connecting that and the addition that needs the variance to the east it's approximately 10 x 28 feet and requires two additional feet beyond the regulations in an R-4 district. Essentially because of the existing non-conformities on the lot it was difficult to plan the addition without requesting the variance as the house was built in 1958 predating current zoning requirements. The property is owner-occupied, well maintained and it does not seem to create any conflicts with the existing neighboring properties. Essentially, that's the majority of the project, I guess I'd like to open it up for comments and questions.

MS. LOCEY: Sure, will the proposed addition cause the removal of any substantial vegetation?

MR. THOMPSON: No, ma'am, few minor bushes but no trees or anything too substantial.

MS. LOCEY: And will it cause any water or drainage problems?

MR. THOMPSON: No, we're proposing gutters on the new addition and footing drains that will handle any new storm water that comes off of it.

MS. LOCEY: Any right-of-ways or easements over the area where the proposed addition would be constructed?

MR. THOMPSON: No, none at the rear or on the property in general.

MS. LOCEY: And with the proposed addition will the house remain in character with the neighborhood with the size of the homes?

MR. THOMPSON: Yes, we feel it's in keeping with scale and use and style with the existing neighborhood. Here's some of the elevations so what we intend to do, this is the front with the new covered front porch as proposed and new dormer on the front of the house, the garage will receive some new treatments, new garage door and some trim. The main addition that we're requesting the variance for is at the rear here, the first floor was the only habitable level, above that is a covered roof balcony but we believe that it keeps within scope of the existing neighboring properties.

MS. LOCEY: Rest of the board members have any questions?

MR. BEDETTI: Is there a structure to the right?

MR. THOMPSON: To the right from?

MR. BEDETTI: Where your addition is?

MR. THOMPSON: I know it's a corner lot. Flip your map over.

MR. BABCOCK: The distance of 18 feet just there's another house that way.

MR. THOMPSON: Over in this area here, yes. They're set a decent ways back from the property line.

MR. DITTBRENNER: Do you know what that distance is?

MR. THOMPSON: No, but we can provide that at the next meeting if you'd like.

MR. DITTBRENNER: How about some pictures?

MR. THOMPSON: Sure, the pictures, currently, the focus is on our house, you might see it in the background but we can provide a few extra.

MS. LOCEY: With just an outline of where the addition would be on just on the picture itself.

MR. THOMPSON: Okay, actually try to sketch a rendering, okay, we can do that.

MR. BABCOCK: Just for the board's knowledge, the zoning in this area the side yard that we're requiring 20 foot was forever 15 feet, the new zoning change for the new lots are now required to be 20, so if he came in before the zoning change he wouldn't even need a variance.

MR. THOMPSON: The size of the lot has made it difficult to plan this addition without asking for a variance and the configuration of the existing house front yard is a pre-existing, non-conforming condition because there are two, since this is a corner lot and the size of the lot itself is well underneath the current requirements since it was developed so long ago.

MS. LOCEY: Any further questions? If not, I'd like to ask for a motion.

MR. BEDETTI: I will make a motion that we schedule a public hearing for Lois Lyon for the variance as suggested on the request.

April 28, 2008

20

MR. DITTBRENNER: I would just qualify before I second you'd provide pictures, I think it's clear I didn't see this in the package how the property is laid out.

MR. THOMPSON: We can provide a few additional.

MR. DITTBRENNER: I'll second that motion.

ROLL CALL

MR. DITTBRENNER	AYE
MR. BEDETTI	AYE
MS. LOCEY	AYE

PATRICIA_COPPOLA_(08-16)

MS. LOCEY: Patricia Coppola, request for 5 foot side yard setback for a proposed 8 x 16 shed at 1037 Rolling Ridge in The Reserve.

Mr. and Mrs. Coppola appeared before the board for this proposal.

MS. LOCEY: Just if you could speak loud enough and give the stenographer your name.

MRS. COPPOLA: There's just I think a correction on here, it was, we're actually in Forest Glen and it's a 10 x 16.

MS. LOCEY: Ten by sixteen and you're in?

MRS. COPPOLA: Forest Glen.

MS. LOCEY: The building department needs to correct the paperwork.

MR. BABCOCK: Well, your address is 1037 Rolling Ridge?

MRS. COPPOLA: Yes.

MS. MASON: The footage is the problem.

MS. LOCEY: Ten foot as opposed to 8 as is indicated here.

MR. BABCOCK: Well, no problem, there's no issue.

MS. LOCEY: But it does need to be corrected before we go to public hearing.

MRS. COPPOLA: Okay.

MS. LOCEY: We have to advise the public on what the

application is.

MR. BABCOCK: You're still going to maintain five feet off the property line?

MR. COPPOLA: We'd like to, yes.

MR. BABCOCK: So you're getting closer, even if it was 12 foot wide that wouldn't be an issue for tonight's meeting, it's going to go closer.

MR. COPPOLA: It's going to go towards the property.

MR. BABCOCK: I'll correct that paperwork.

MS. LOCEY: Did you want to just explain a little bit what you'd like to do?

MR. COPPOLA: We basically just want to put a shed up in the back yard and it's going to be 10 foot wide so plus the 10 foot side yard setback it would kind of be like, you know, it would be like an eyesore in the middle of the yard and we're at the little bit higher of an elevation than the neighbor so kind of was thinking if we get 5 really wouldn't change much for them whereas it would keep our yard open for the kids.

MS. LOCEY: And will the construction of the shed cause for the removal of any substantial vegetation?

MR. COPPOLA: No, nothing.

MS. LOCEY: Will it cause any water runoff or drainage problems?

MR. COPPOLA: No.

MS. LOCEY: Are there any right-of-ways or easements in the area where the shed will be constructed?

MR. COPPOLA: No.

MS. LOCEY: Does the size and design of the shed fall in character with the rest of the neighborhood? Is it similar to sheds that your neighbors have?

MR. COPPOLA: Basically, yeah, you know, it's not going to be, it's going to be, you know, sided, it's going to look like it's a part of the house.

MS. LOCEY: And I think you have already touched on it but could you explain why it is you need this variance and you can't locate the shed in another portion of your property so you would not need the variance?

MR. COPPOLA: Well the other side would be the same situation and the back, the end of our property line is like 15 feet higher than our actual grass so there would be--

MS. LOCEY: The elevation makes it so you--

MR. COPPOLA: You can't put it back, it's got to go to the sides and both sides are the same problem for us.

MS. LOCEY: Does anyone else have any questions for the applicants?

MR. DITTBRENNER: The back side of the property it's elevated up behind the retaining wall and couldn't be set back there?

MR. COPPOLA: Again, it would be like this big thing right in the middle where the kids play, that's kind of why we wanted to keep it on the side. On the higher elevation is a swing set, trampoline for the kids.

MS. LOCEY: Mr. Bedetti, any questions or concerns?

MR. BEDETTI: No.

MS. LOCEY: I'd like to call for a motion to schedule a public hearing.

MR. BEDETTI: I'll make a motion that we schedule a public hearing for the application of Patricia Coppola as requested for the variance as recommended here in their application.

MR. DITTBRENNER: Second it.

ROLL CALL

MR. DITTBRENNER	AYE
MR. BEDETTI	AYE
MS. LOCEY	AYE

PUBLIC_HEARINGS:

PETER_&_IRENE_MOLONEY_(08-05)

Kevin Brennan, Esq. and Mr. Peter Moloney appeared before the board for this proposal.

MS. LOCEY: Request for lot 1 15,189 square foot minimum lot area gross and lot 2, 9,397 square foot minimum lot area gross.

MR. BRENNAN: Good evening, ladies and gentlemen, my name is Kevin Brennan, 284 Main Street, Cornwall, I'm here with Mr. Moloney, the applicant. We're requesting an area variance, our request is hopefully not considered substantial. The requested area lot 1 would be 81 percent of the required square footage which is 80,000 square feet and the requested area in lot number 2 would be 88 percent of the required square footage. The improvement of the existing property for the benefit of the applicant is not feasible by any other method. He hopes to construct an additional home which will have no adverse affect on the neighborhood and the plans which are very preliminary at this point I should say for the construction would result in the construction of a home within the footprint as shown on the map showing lot 1 and the home would be in keeping with the general standards of the neighborhood. We believe that it would not have an adverse impact or affect on the neighborhood and that in fact the character of the neighborhood would be enhanced by the subdivision and the subsequent construction of a single-family home in keeping with the standards of the neighborhood. And that the benefit to the applicant would greatly outweigh the possible detriment to the health, safety and welfare of the neighborhood. And no undesirable change would result or be produced by the construction of the home on the additional lot if the variance were granted.

MS. LOCEY: After the proposed subdivision, what's the size of those two individual lots as compared to the lots in the neighborhood?

MR. BRENNAN: The lots in the neighborhood are substantially similar, very, very similar. I don't have the precise dimensions, however, of the remaining lots in the subdivision. But I am confident in saying that there is no substantial deviation.

MS. LOCEY: So the existing lot as it currently exists is quite a bit larger than the lots in the area?

MR. BRENNAN: It is certainly larger, I couldn't say substantially so.

MR. MOLONEY: My cousin's place is 1.3 acres and now and I think this is 1.7.

MR. BRENNAN: The existing lot about 1.7 to 1.8 I believe total so again larger but not tremendously larger but certainly larger than the existing other lots.

MS. LOCEY: Does the board have any questions otherwise I thought we'd open it up to the public?

MR. BEDETTI: No questions.

MR. DITTBRENNER: No questions.

MS. LOCEY: Is there anyone here from the public to speak on this application, either for or against? I guess not. So with that, we'll close the public portion of the application. Myra, can you tell me how many letters were sent?

MS. MASON: On April 14, I mailed out 21 addressed envelopes and had no response.

MS. LOCEY: Okay, counsel has reminded me that since there are only three members here that you would need a unanimous decision of this board in order to have the required majority of all five members and if you're not comfortable with that you do have the option of just continuing the public hearing to another date in the near future or you can go forward tonight. Are there any easements where this proposed property line would be drawn?

MR. BRENNAN: No.

MR. KRIEGER: Across the property anywhere?

MR. BRENNAN: I don't believe so, Mr. Krieger. As you well know, we'll be entering into a maintenance agreement with all the other lot owners, this will create a fifth lot if it's approved on the private road and it's not in excess of the permitted numbers of lots.

MR. KRIEGER: Yes, just wanted to make sure that there were no, by creating this lot nothing to force the board will not be enforcing an encroachment on somebody's easement.

MR. MOLONEY: One of the main reasons why I'm here doing this tonight is I'm getting fed up with people coming by at nighttime, dropping garbage in there, beds, dressers, just getting fed up with it.

MR. KRIEGER: So the vacant, its present vacant condition is an invitation to people to use it as a dumping ground?

MR. BRENNAN: Yes.

MR. MOLONEY: You can drive by there and see it, I mean, I'm just getting, I want to try and keep it the way it was but at this stage just getting fed up with

it.

MS. LOCEY: Yes, point well taken, that's an important point as far as the character and the health and safety of the neighborhood that if a subdivision, if the approval of a subdivision will help defray or eliminate that that certainly would be a helpful thing.

MR. DITTBRENNER: Road maintenance agreement part of the homeowner's association or deed restriction?

MR. MOLONEY: We all get together, if there's potholes we get whatever we need to blacktop and we've got our own plows.

MR. DITTBRENNER: Is there a formal deed restriction on each parcel for that road maintenance agreement or is it just a homeowner's--

MR. BRENNAN: It's informal at this time but it will be formalized, that's our intention.

MR. BEDETTI: Is the applicant the resident of one of those?

MR. MOLONEY: Yes.

MR. BEDETTI: Or will be?

MR. BRENNAN: Mr. and Mrs. Moloney live at what would become lot 2 if the subdivision was approved.

MR. BEDETTI: And the other one is?

MR. BRENNAN: This would be a vacant lot, sir.

MR. BEDETTI: Just generally open for sale to anyone, it's not a relative or anything like that?

MR. BRENNAN: No, it's not anticipated.

MR. MOLONEY: No.

MS. LOCEY: How will the undersized lot affect their ability to put a house on it?

MR. BABCOCK: Not at all, this was a one acre zone prior to the new zoning of two acres. If you look at the site map you'll see darker area up in the corner that will give you up in this far corner the dark area is this lot you can see that it is substantially larger than the lots around it and the ones that are on Butler Lane to my knowledge I think most of them are one acre lots and you can see how some are bigger and some are smaller and it's the odd shape of the lots which creates the size.

MS. LOCEY: So we just would like to know if you'd like us to go forward or--

MR. BRENNAN: Yes, we certainly would be comfortable with that.

MS. LOCEY: Gentlemen, if you could have a motion?

MR. BEDETTI: I'll make a motion that we grant the request for the subdivision lot 1 and lot 2 the gross minimum lot area variances as requested.

MR. DITTBRENNER: I'll second it.

ROLL CALL

MR. DITTBRENNER	AYE
MR. BEDETTI	AYE
MS. LOCEY	AYE

DEBORAH_MENKENS_(08-11)

MS. LOCEY: Request for one additional horse and variance to permit three horses to be maintained 20 feet from the side, rear and front property lines in an R-1 zone.

Ms. Deborah Menkens appeared before the board for this proposal.

MS. MENKENS: Deborah Menkens, 1 Sean Court, Rock Tavern, New York.

MS. LOCEY: Okay, Mrs. Menkens, if you want to explain the application.

MS. MENKENS: Currently, I have an electric fence on my property line 75 feet maintain two horses, I would like to take down the electric fence and get a permit for the wooden fence which would give me .6 acres and bring in a third additional horse.

MS. LOCEY: So currently you're allowed two horses on this size lot?

MS. MENKENS: Yes and I currently have two horses.

MS. LOCEY: And you want to bring a third horse onto the property and to give them more grazing room, more room to--

MS. MENKENS: More exercise room, I supplement their food so they don't rely on the paddocks for food.

MS. LOCEY: And you want to take down the--

MS. MENKENS: The red line is the electric fence which I have a permit for to maintain them, I would like to take that down and keep the, use the wooden fence to maintain them off the property line. And the variance

that you have here says 20 foot, 25 feet.

MS. LOCEY: Twenty.

MS. MENKENS: Actually, it's different footage at different parts of the property.

MS. LOCEY: Is 20 the minimum?

MR. BABCOCK: Yes.

MS. LOCEY: So you have at least 20?

MS. MENKENS: Twenty-five.

MS. LOCEY: Twenty-five or more depending because of the shape?

MS. MENKENS: Twenty-five to 78.

MS. LOCEY: And the electric fence is invisible?

MS. MENKENS: No.

MS. LOCEY: You can see the electric fence?

MS. MENKENS: Yes.

MS. LOCEY: But would it cause any substantial change to the, to what a person sees as he or she walks or drives by?

MS. MENKENS: Yeah, it's sort of an eyesore.

MS. LOCEY: So it would improve the aesthetics of the building?

MS. MENKENS: Of the environment, yes.

MS. LOCEY: And the existing wooden fence that you have

would remain in the same location?

MS. MENKENS: Yeah, but it wouldn't be moved because they're cemented down, the posts are cemented down.

MR. DITTBRENNER: Is that fence that the brown line fence does that meet the requirements to contain a horse on the property?

MR. BABCOCK: That's why she's here tonight, we asked her to put up the electric fence because that didn't meet the current zoning which requires the fence to be 75 feet from the property line.

MR. DITTBRENNER: But is there a style and height of the fence?

MS. MENKENS: It's 54 inches high, it's about this high and the posts are 6 feet apart and each post is cemented into the ground.

MS. LOCEY: And the application, the electric fence makes her comply with as far as the distance.

MR. DITTBRENNER: The 75 foot setback.

MS. LOCEY: Mr. Bedetti, any further questions?

MR. BEDETTI: I only had I think one question. Now where your house is that's a separate parcel from where your stable is, is that correct, or do you have one large parcel?

MS. MENKENS: It's an L-shaped.

MR. BEDETTI: So it is one?

MS. MENKENS: It's not subdividable, no, it's one continuous property.

MR. BEDETTI: So your house and where your stable and your walking yard is whatever for the horses is all one parcel?

MS. MENKENS: Yes.

MR. BEDETTI: Okay, now with the picture there the way it was blocked off I didn't know whether that was a separate parcel or not.

MS. LOCEY: The entire parcel is 2.346 acres.

MS. MENKENS: Which is part here, the entire parcel is 4.149.

MS. LOCEY: So you have 4.159 acres, 2.26 is where you keep the horses?

MS. MENKENS: Right.

MS. LOCEY: And the existing electric fence gives the horses only 1.65?

MS. MENKENS: Something to that effect.

MS. LOCEY: And you're looking to give them 2.35?

MS. MENKENS: Yes.

MS. LOCEY: A larger area in which to graze and roam?

MS. MENKENS: Yes.

MS. LOCEY: Perhaps we can open this application up to the public, if there's anyone here wishing to speak please come forward and we just ask that you speak loud enough for the stenographer to be able to hear and for you to identify yourself, name and address.

MR. KEAN: My name is Peter Kean, K-E-A-N and this is

my daughter, April. My address is 1 Brittany, B-R-I-T-T-A-N-Y Terrace, Rock Tavern, New York. April, what's your address?

MS. KEAN: 6 Beach Acres Drive, Rock Tavern, New York.

MR. BEDETTI: What is the address?

MS. KEAN: 6 Beach Acres Drive.

MR. KEAN: Now I'm a little hard of hearing so if you have anything to say or somebody asks me a question and I give you a funny answer, it's probably because I didn't understand you. I will just read through this, this is a letter and supporting documentation in opposition to granting Deborah and Lawrence Menkens' variance from setback requirements for the keeping of horses and in opposition to the request, their request she keep a third horse on the property. We would wish to advise the zoning board that we did not receive notification of this public hearing nor did we receive notification of the April 9, 2007 public hearing.

MS. LOCEY: Seven?

MR. KEAN: Seven.

MS. MASON: Different application.

MS. LOCEY: That's a different application.

MR. KEAN: I understand that but I mean this is twice in a row on the same request and Miss Menkens certainly knows I own property adjacent to her.

MS. MASON: Well, the assessor does the list.

MR. KEAN: I understand that and I spoke to the assessor and spoke to the supervisor and I spoke to everybody.

MR. BABCOCK: The first meeting was a preliminary which you wouldn't get notified about that.

MR. KEAN: I'm not talking about this one, I'm talking about the public hearing last year.

MR. BABCOCK: Okay.

MS. MASON: That was the previous application.

MR. BABCOCK: Yes, okay.

MR. KEAN: Well, anyway, continuing on. Since the last hearing two of the objecting neighbors have moved and the third one has now put their house up for sale. Had we been notified of the previous meeting we might have been here to prevent the upheaval of three families. We read with interest the minutes of the last public hearing and the minutes of the March 10, 2008 preliminary hearing. Much of our presentation contradicts statements made by Deborah Menkens, except for the November 6, 2007, excerpt from the November 6, 2007 New Windsor Comprehensive Plan Update, this is a draft of the proposed comprehensive plan basically and I will not read it all, this section encourages the Town Board and the planning board and the zoning board to cooperate in the establishment and coordination of land uses. Section 6 Agriculture, specific recommendation for agriculture, revisit current regulations relating to housing and maintaining horses in the Town Zoning Code to assure adequate space buffering and the well-being of animals. Land requirements should incrementally increase on a sliding scale based upon the number of horses. So, if you need X number of land for a single horse, you need 3 X for three horses. The appropriate section is included in reference so if you go to Reference A I have the entire appropriate section for that clause. Okay, B, Deborah Menkens appeared before this board in 2006 requesting a

setback variance for the keeping of horses. At that meeting, we provided a scaled drawing supporting a letter prepared by William Hildreth, land surveyor. The scaled drawing letter and map are included as Reference B so if you'd being kind enough to go over to B. The pink or the red borderline is the Menkens' fence, the wooden fence. The green is where she has her electric fence. But when I was over there standing on my property and walking around I didn't see any electric fence which is not to say it's not there, I saw a lot of rope. The brown on the right side on the right side of the page is where they're spreading manure so they're spreading manure all along our property line, that's lands of Kean on the right-hand side all along the side border which is border with David Shield and some around on Sean Court side but not very much there. There's substantial differences in the northern property line setback claimed by Menkens and those documented by the maps of the American Telephone and Telegraph Company as well as those of the New York, Ontario and Western Railway whose property now belongs to Kean. And they're included in Reference C if you just look at the first one you'll see pretty technical map of the borders.

MS. KEAN: Right, when you look at the railroad map the pink line is the actual property line and highlighted in yellow that's actual marker that's there from the railroad company that's still on the property marking the corner of the property.

MS. LOCEY: I don't understand that point, what's that point you're making?

MS. KEAN: We'll reference that when we get to the next picture because her measurements are passed that, they're based coming off of our property.

MR. KEAN: Menkens mistakenly claims a north boundary 12 to 15 feet beyond the actual property line or

boundary line.

MS. KEAN: Meaning and referring to that marker, that's why we put the maps in there for you to reference.

MR. KEAN: And she has caused to be obliterated a railroad installed wire mesh fence with posts that had been in place for close to 100 years. Furthermore, she's installed a green plastic mesh fence, numerous high visibility ribbon markers and a string line where she believes her property line to be. She also placed numerous paper signs along her assumed boundaries stating no photographs allowed without permission of the Menkens.

MS. LOCEY: Okay, well--

MR. KEAN: And I have a picture, I didn't provide it.

MS. KEAN: Would you like me to explain to you on that?

MR. KEAN: This is pretty technical but I'm more than halfway through, okay. I'm sure everybody knows about the present accessory use requirements for horses on a small lot. But as a point of interest, I just would like to mention that the average 1,000 pound horse generates 45 pounds over feces and urine a day or 8 days per horse per year three horses would be 24 tons or 48,000 pounds of manure. When we look at some of the pictures after the map that show the approximate property line that I have drawn in an arrow, if you look tab C which refers to the map and there are two pictures after that and that's it, the first one has a property line and the second one also has the property line marked on it different angles and the first picture in that sequence is the AT&T installed line marker, okay. And moving on to D on September 18, 2006 we mailed Menkens two duplicate letters, one sent certified mail and the other sent regular mail with a certified, excuse me, with a certificate of mailing

from the United States Post Office. The certified letter was returned to us as unclaimed after three attempted delivery periods over two weeks. The letter advises Menkens that they're trespassing on land owned by us and request that they cease their trespass activity. Copies of the receipts, unopened certified letter envelope and the letter are included as Reference D. You also have the letter. Going to E, Reference E, photographs of the Menkens' stable driveway off Sean Drive. The sign clearly indicates a commercial enterprise and does so in a location that is not visible from a town road. You can read the sign with a telephoto lens. F, quoting the zoning code R-1 bulk use regulations, 5 acre minimum lot size. Now, I understand clearly that's for a commercial operation but what's interesting about it is it requires that there are no spreading of manure within 50 feet of my lot line. Reference F which is the next couple pictures are photographs of the area Menkens uses for spreading manure, this area is also marked on Reference A scale setback map which you saw earlier, that's the one with the colors on the front of it. Can I go to G?

MS. LOCEY: Yes.

MR. KEAN: G, the Menkens' water well is now in violation of New York State Public Health Law number 206 (18), included in table one required minimum separation distances to protect water wells from contamination as their well is located within the area where horses are kept. All field dropped and spread manure and urine washes into a stream on Kean property which is less than 100 feet from the property line. It then flows as a stream into a very clean private lake. We're very concerned with nutrient loading to the lake and its resultant plant, weed and algae growth as well as pathogens and parasites. It would seem to me that according to health law and I'm not an attorney and don't profess to be one is that they have violated their Certificate of Occupancy. Reference H contains

various information on manure management and herd bound horses. A herd bound horse can easily be rehabilitated. All it requires is diligence, patience and continuing effort. Also enclosed is a chart of problematic manure disposal techniques, some of which the Menkens practice. With regards to the, I don't believe I said this so I'm repeating, please forgive me, with regards to the proposed code changes with the master plan from the town being revised in view of the public safety and health issues involved consideration of the comprehensive plan, recommendation for a moratorium accommodations for the ZBA variance approvals for keeping of horses should be established. Perhaps the ZBA could seek input from the Town Board and town attorney as well as your own attorney. Okay, and that's what I've got.

MS. LOCEY: Very detailed presentation, thank you. Are there other people in the audience to speak on this application? If not, we'll close the public portion of the hearing. Yes, Myra, would you please read the mailings.

MS. MASON: On the 14th day of April, I mailed out 23 addressed envelopes and had no response.

MR. KRIEGER: The record should also reflect that the zoning board has received 5 post cards, 4 of which state, I/we are aware of the request that Deborah Menken is making to the Town of New Windsor Zoning Board of Appeals. I/we have no objection to her request for the fence line or the additional horse on our property. That is the text of 4 of the cards signed by 1, 2, 3, 4, 5 persons. The fifth card has been altered to read I/we object to her request for the fence line or the additional horse on her property and that one is unsigned, although it indicates that the person who wrote that card said I will be at the meeting to see how many rejections to this request are stated. Anyway, those cards should also become part of

the record.

MS. LOCEY: We seem to have a discrepancy on lot lines and the distance between the existing fences and what's stated to be the existing line lot lines. The public portion of the meeting has been closed. Does the building department have any knowledge of that?

MR. BABCOCK: I have the survey that was supplied to me by Mrs. Menkens done by a certified surveyor, and the 20 foot in the back of her property it indicates that this fence that she's asking to be, the fence to maintain the horses is 23.5 feet. If you come along the Decker property line at some point there there's a drain right at the corner, we estimated that to be approximately 20 feet and that's where we got our number from and used that as the closest distance to any property line. It's the worst case scenario of any of the fence. We didn't as Mrs. Menkens stated before we didn't say at one corner it's 75 feet, at one corner it's 32 feet, the next corner it's 30 feet and so on and so forth, we took the worst case scenario which we said was 20 feet. Do you have, I don't know if you have this cause this is something that you, that we wouldn't normally copy?

MS. MENKENS: I had this survey also done because the zoning board asked me to have this done because of the lot line.

MR. BABCOCK: The 25.5 feet is indicated here, that's the indication of the closest property line but right here we scaled that down as being 20 feet, that's where we got the number, this is the closest she is to this fence, the fence she wants to use, this is the wood fence that goes along here but this point is 30 feet, 32 feet, here it's substantial, 70 feet, 40 feet, you know.

MS. LOCEY: Where is the property of Kean?

MR. BABCOCK: Kean is back here.

MS. MENKENS: And--

MR. BABCOCK: This is the AT&T line he had discussed.

MS. MENKENS: And also the cow fence that he was talking about runs along my property line there and it's grown into the trees and brush.

MS. LOCEY: I would like the other board members to see that.

MS. MENKENS: Can I ask why wasn't he on the addresses?

MS. MASON: I can answer that, I don't do the list.

MS. LOCEY: I think that we should make a notation to the, a note to the assessor's office that it's been a problem in the past if and when there should be any further applications they should be on the list.

MR. BEDETTI: Is this the only map you have relative to surveys? Did they present a map that conflicts with this map at all?

MR. BABCOCK: I don't know that Mr. Kean is saying that the survey is incorrect, I think what Mr. Kean--

MR. BEDETTI: Well, the question of where the property lines are in dispute.

MS. MENKENS: It's amazing that it's incorrect cause it was done by one of his residents at the trailer park.

MS. LOCEY: I really would like to caution everyone I don't want this to turn into a battle of the neighbors here, we're here to objectively look at the application and to make our decisions rendered on the information

we have, not on the likes and dislikes of each neighbor.

MR. BABCOCK: I don't know that the survey's not correct or incorrect and I shouldn't have spoke for Mr. Kean, I think where the discrepancy is where is that property line out there he feels the property line's here, she feels it's here, that's something that they have to deal with. I don't know whether he's got a survey that's contrary to that survey or not and he may have, I mean, we've had that in the past.

MR. KRIEGER: There's some kind of a survey in your handout there.

MR. BABCOCK: Yeah, I have it.

MS. MENKENS: Which one's right?

MR. KRIEGER: Well, if there are boundary disputes between properties that's a matter for court resolution, it's not a matter that's zoning board of appeals has jurisdiction to decide one way or the other in terms of resolving that dispute. The location of the boundary however is a factor that they can take into, its members can take into account when deciding how substantial the variance request is which is one of the requirements of the law and should be decided whether the variance is substantial or not and certainly the location of the boundary line may or may not play a part in your thinking as to whether it's substantial. The law doesn't provide any guidelines for any benchmarks for substantial, you know, it's X number of percentages substantial X below that is not substantial, it doesn't say that just says substantial so that becomes a matter to be decided within the sound discretion of each zoning board of appeals member who's voting.

MS. LOCEY: Right. Mrs. Menkens, I should remind you

that there are only three members of the board here, we have a five person board and you must receive a majority vote of that. That means all three members here would have to vote unanimously in order for your application to pass. And you do have the right to ask for a continuation of the public hearing to a date in the near future when hopefully we'll have five members here.

MS. MENKENS: Do I have to do the public hearing and wait for the five members?

MS. LOCEY: No, the public portion and I'm not the attorney, he is, and he'll tell me if I'm wrong, the public portion of the hearing is closed.

MR. KRIEGER: The additional members would read the minutes and indicate whether they need other materials that haven't been submitted and would indicate each of those members would indicate whether or not they feel that's sufficient to allow them to make a decision.

MS. MENKENS: I wouldn't have to do a public hearing?

MR. KRIEBER: No, you would not.

MS. MENKENS: I'll postpone it.

MS. LOCEY: I think the record should just show that the applicant has asked that the public hearing be continued until time in the near future till May 12th.

MR. KRIEGER: So it would require--

MS. LOCEY: Tell you the truth, I will not be here May 12, you already know that.

MS. MENKENS: Can you, can you vote--

MS. LOCEY: I would not be able to vote in abstentia.

MS. MENKENS: No, I can't keep putting it off any further, I'm going to have to get rid of them.

MS. LOCEY: I think that we have two parts of this application, one is for a request for an additional horse and the second is that the fencing, the electric fence for all intents be allowed to be taken down to give those animals whether it be two or three more room to roam, feed, so it's up to you, if you want the board to move forward or if you do want to continue it there will most likely be four members here but I know I'm on vacation.

MS. MASON: Just so you know, I think there's only one meeting in May which would be the 12th cause of the holiday.

MS. LOCEY: I also want to say that we really got kind of got into the nitty-gritty of this, you gave us a little basic summary of what it is you're looking for, some comments were made as far as pictures advertising a business, the board really would need to address the issue is this for your personal family, which is what we were told in the past?

MS. MENKENS: Right, what happened, now I understand what happened was I had a sign made up because I wanted to be certified by the New York State Horse Health Association which I have been two years now best practices in horse care and I had keep putting every morning I put tape over it and every afternoon when I go back the tape is ripped off, I'm putting tape back over it because it's not a business, it's a private facility and the tape keeps getting ripped off. Now I know why the tape's being ripped off.

MS. LOCEY: Again, that doesn't explain to me why you're doing that, I know you want to be certified by this.

MS. MENKENS: New York State Health Association, they require that.

MS. LOCEY: Do they require that you're a commercial business?

MS. MENKENS: At this point it is but no longer.

MS. LOCEY: Where is the sign now?

MS. MENKENS: It's next to my fence because I need to have a sign, that was one of my standards for certification.

MR. BEDETTI: I have two questions, number one is from a legal point of view, claims that he did not get notification on even this meeting. What are the ramifications of that regardless of how we vote one way or the other, could that cancel out our vote and be challenged at a later date?

MR. KRIEGER: If it were challenged in an Article 78 most likely outcome would be in my opinion that a Supreme Court would send it back for another hearing and they may not, there's also a doctrine called harmless error, since the applicant did not receive notice, the objectant did not receive notice is here and made a presentation, it may, probably would render it a moot point which had he not been here that might have had a different outcome had it gone to court. You're asking me a couple what-ifs here but the answer to your question is probably not.

MR. BEDETTI: The other question I had was relative to the handling of the manure and some photographs here, it shows the distribution like it's near her property and if you're going to be getting an extra horse you may get an extra horse and obviously will be additional materials to handle, what kind of plans do you have

relative to handling that?

MS. MENKENS: What I have done these last two weeks is spread manure because where you see this I'm growing corn, we're, TR'ing it into the soil, do you know what a TR is? It turns the soil as you go, we're putting cornfields around the paddocks. But normally I put it on the black wagon that we have and we cart it to Ace Farm, the chicken farm in Monroe.

MR. BEDETTI: Is that in violation of the code the distribution of the manure?

MS. MENKENS: I don't know.

MR. BEDETTI: Mike, are you aware of it?

MR. BABCOCK: As far as the health code I don't know but I do know that in this attachment that Mr. Kean provided there's a section of the town ordinance that says that it cannot go within 50 feet of a property line. It's clearly within 50 feet of the property line because it's on the outside of the fence and then in that area the fence is approximately 31 feet from the property line which brings up an interesting point that if the fence is allowed to stay where it is even the horses are going to be within the 50 feet.

MS. MENKENS: I don't understand why Mr. Kean brought up past meetings, I don't know what he was trying to accomplish by bringing up those.

MS. LOCEY: We're just focusing on this application just to reassure you of this.

MS. MENKENS: So your decision will be made on the past things that he's brought up?

MS. LOCEY: No, on information we have in front of us now.

MR. BABCOCK: There's a survey that was supplied that's different, it's done by Bill Hildreth that Mr. Kean has in his package here. The one corner on the survey supplied by Mrs. Menkens is 30.7 feet, Bill Hildreth says it's 32 feet the fence so it's real close.

MS. LOCEY: The one that says 32 feet is by whom?

MR. BABCOCK: By a surveyor I assume that Mr. Kean hired and then in the middle it says Mrs. Menkens says 30.5, his says 31, so there's five, no, it's five inches, six inches, it's half a foot and the other one is 23 foot 5 and the Mr. Kean's survey says 23 foot so that's half a foot so Mr. Kean's surveyor is saying that Mrs. Menkens' fence is six inches closer in two spots to what her surveyor is saying.

MS. LOCEY: All right, also reference was made to the New Windsor 2007 Comprehensive Plan Update (Draft) dated November 6, 2007, I wonder if that's been finalized?

MR. BABCOCK: No, it has not.

MS. LOCEY: So it's still a draft.

MR. BABCOCK: One question I have for Mr. Krieger and I don't normally get into that but on this one section where it says that no manure or odor producing should be 50 feet which is in the town zoning code.

MS. LOCEY: Which section?

MR. BABCOCK: It's the bulk table, I'm trying to find it now, R-1 zoning, it's at the end of Tab F.

MR. KRIEGER: Yes.

MR. BABCOCK: If the fence is allowed to be closer than

that 50 feet would she need a variance of that section of the bulk tables? It's under F, the last page in F it's the R-1 table of use bulk regulations saying that it can't be within 50 feet of any property line.

MS. LOCEY: But what is it?

MS. MENKENS: The manure.

MR. BABCOCK: Says manure, storage of manure.

MS. MENKENS: That's what I read it as storage of, why can't you spread it as fertilizer for my garden?

MR. KRIEGER: No, it says stables, stable or similar animal housing or storage, not only storage, it's--

MS. MENKENS: I'm fertilizing.

MS. LOCEY: Well, the stable and/or housing for the animals are not within 50 feet.

MS. MENKENS: No, they're like 100 or 200.

MS. LOCEY: But there's obviously the potential of manure being closer than 50 feet because if the animal uses that area.

MS. MENKENS: They're allowed to use the wooden fence line, yes, they'll be poohing along the fence line cause that's their habit.

MS. LOCEY: Would it then be required that that be removed?

MS. MENKENS: I do remove it daily.

MS. LOCEY: On some sort of routine basis?

MS. MENKENS: I do daily.

MS. LOCEY: Otherwise, it could be considered storage.

MR. KRIEGER: Yes, that's a good point, yes, it might be considered storage. Now the question is how long does it have to remain to be considered storage? Well, I can't tell you off the top of my head whether there's any--

MR. BABCOCK: Well, I think the ordinance requires that the fence be 75 feet from the property line so when you're complying with the ordinance you don't have that issue because everything's 75 feet from the property line. When you reduce that, I mean, I wasn't even aware of this, I mean, I didn't read this section of the code, the 50 feet because normally we maintain it 75 feet from the property line. I just want to make sure we're covered, that's all, on what we're asking for or not asking for and I know that that's, I read it a few times and it's unclear to me.

MR. KRIEGER: Well, yes and it's because of the storage questions, I indicated I'm aware of no reporting cases on that and I frankly doubt that there are any frankly which would mean that the use or interpretation of the word storage at this level would be up to the members, what is storage, if it's there on the ground an hour a day two days a week, you know.

MR. DITTBRENNER: It also includes at the end of that sentence or use, we're using it to fertilize to try and grow grass or corn or whatever, I believe it falls within that definition.

MR. KRIEGER: Yes or use that would also be a--

MR. DITTBRENNER: Which then I think leads us to we would need a variance based on that.

MR. KRIEGER: A use variance, I believe so.

MS. LOCEY: Well, a use variance based on what she's done at this point and that's spreading the manure.

MR. DITTBRENNER: And will continue to happen and what will continue to happen when you expand the fence lines closer to the--

MS. LOCEY: No, I don't agree with that because if she's not spreading it you don't have the same predicament.

MR. DITTBRENNER: Then you come back to what's the definition of storage.

MS. LOCEY: Exactly.

MR. BEDETTI: That permitted use starts off with following commercial agricultural operations.

MS. LOCEY: That's true too.

MR. BABCOCK: If you read on 1A, 1B and 1C it deals with boarding, breeding, raising of cattle, including sheep, goats, pigs and horses and rental of horses so another issue that's not real clear there my understanding it's not a commercial operation.

MS. LOCEY: Mrs. Menkens, we're back to your pleasure.

MS. MENKENS: All right, I'm going to ask you one more time if I wait do I have to do the public hearing again?

MS. LOCEY: No.

MR. KRIEGER: No.

MS. LOCEY: The public portion of the public hearing is closed, you will not need to send out or have sent out

notices to adjacent property owners.

MS. MENKENS: Just come again.

MS. LOCEY: And the board will render a decision.

MR. KRIEGER: And the additional members will indicate whether they can vote.

MS. LOCEY: Based on their readings.

MS. MENKENS: I would like to adjourn it.

MS. LOCEY: Continue it?

MS. MENKENS: Continue it as long as I don't have to do a public hearing again.

MR. KRIEGER: No, you don't.

MS. LOCEY: Myra makes a good point that the public hearing will be continued to May 12, 2008.

MR. KRIEGER: You need a motion to that effect.

MS. LOCEY: We'll take a motion.

MR. BEDETTI: The decision has been made to move this to another date.

MR. KRIEGER: No, no, the motion, it's not the decision has not been made till you vote, the recommendation is that this matter be tabled until May 12.

MR. BEDETTI: Is that what you want, were you looking to table this?

MS. MENKENS: No, I wasn't, I was coming here tonight looking for an answer.

MR. KRIEGER: Well--

MS. MENKENS: But--

MR. KRIEGER: The reason I say tabling, it's a legal term, continuation has no legal meaning, it's tabling.

MR. BEDETTI: But she's, it's her intent to go on for us to take a vote tonight.

MS. MENKENS: I'm afraid to after this, I'm devastated, he does this to me, I just, I don't know what I've done.

MR. BEDETTI: So you don't want to go on tonight?

MS. MENKENS: No, I can't take the chance, I'm sorry.

MS. LOCEY: We'll take a motion.

MR. BEDETTI: I'll make a motion we table this issue for a time till May 12 to table this until May 12.

MR. DITTBRENNER: Second it.

ROLL CALL

MR. DITTBRENNER AYE

MR. BEDETTI AYE

MS. LOCEY AYE

FORMAL_DECISIONS

MS. LOCEY: We do have one final item on the agenda which is to make formal decisions for various application that have come before the board at previous meetings. We have the option of putting all of them in one fell swoop with one motion to accept these formal decisions as presented.

MR. BEDETTI: I wasn't a member of the board when these were done in 2007 so--

MR. KRIEGER: Legally speaking you may but you do not have to recuse yourself on those grounds, that's your decision. If you feel that you cannot render a decision even after reviewing the minutes and so forth then you may recuse yourself but you don't have to as I say.

MS. LOCEY: Or if you're more comfortable we can table this issue till May 12.

MR. BABCOCK: Well, quite honestly we have to give that some thought because if you're not going to be here on May 12, there's only two existing members so these gentlemen some day are going to have to vote on this.

MS. LOCEY: These are formal decisions as finalized by an attorney, by the attorney after the decisions the board publicly made at a meeting similar to this evening.

MR. BABCOCK: This is the written decision that goes in the file, typically everyone as you can see Jerry's Self-storage it's almost built, you know, I mean, it's a written followup that goes into the file just to make everything legal and if there were any issues with them they wouldn't be on here tonight.

MR. BEDETTI: All that's nice but after I read the

decision on something I was not a part of doesn't make sense.

MR. KRIEGER: For the same, basically, it's the same principal when they have elections and town boards change, they're legally bound by what the last town board did, whether they were a member or not, they don't get to redo or re-decide anything and they're bound by it. Otherwise, if the law were otherwise then it would come to, everything would, all procedures would come to a screeching halt as soon as you had a new member.

MR. BABCOCK: But if we save this until June when the three existing members are here is what we'll have to do hopefully there's no conflict between now and then.

MS. LOCEY: Or we can call for a motion and see if it passes tonight.

MR. BABCOCK: That's correct.

MS. LOCEY: Myra has offered to send you gentlemen copies of the formal decisions which you can compare to prior minutes to make sure.

MR. KRIEGER: Yes but but then you'd have an opportunity to review the minutes and so forth and familiarize yourself as opposed to being--

MR. BEDETTI: That moves us closer to the June date, all right.

MS. MASON: Well, if I do that it would be before the May 12 meeting.

MR. BEDETTI: We would not be voting accepting these until the first meeting.

MS. MASON: Right, which is May 12.

MR. BEDETTI: That's the only meeting in May, next meeting would be June.

MS. LOCEY: So do I have a motion to either approve the formal decisions or ask that they be tabled until May 12 which would you prefer?

MR. BEDETTI: I will make a motion that we table till May 12 the formal decisions listed here on the agenda.

MS. LOCEY: Do I have a second? Motion fails for lack of a second. I will offer a motion to accept the formal decisions as indicated on the agenda of the Zoning Board of Appeals meeting dated April 28, 2008.

MR. DITTBRENNER: Second it.

ROLL CALL

MR. DITTBRENNER	AYE
MR. BEDETTI	ABSTAIN
MS. LOCEY	AYE

MS. LOCEY: Motion fails for lack of a quorum.

MR. BABCOCK: We're going to put them on the May 12 agenda.

MR. KRIEGER: Chairman Kane, it's his call what goes on the agenda, if he wants to put them back on the agenda.

MS. LOCEY: Motion to adjourn?

MR. BEDETTI: So moved.

MR. DITTBRENNER: Second it.

ROLL CALL

April 28, 2008

56

MR. DITTBRENNER	AYE
MR. BEDETTI	AYE
MS. LOCEY	AYE

Respectfully Submitted By:

Frances Roth
Stenographer

